

SENATE BILL NO. 308
INTRODUCED BY TAYLOR

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING TELEMARKETING LAWS; PROVIDING FOR THE FILING OF CERTAIN INFORMATION WITH THE COMMISSIONER OF POLITICAL PRACTICES BY PERSONS CONDUCTING POLITICAL SURVEYS OR POLITICAL CAMPAIGNING BY TELEPHONE; ~~AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO DISAPPROVE SCRIPTS SUBMITTED BY TELEMARKETERS;~~ REQUIRING OUT-OF-STATE TELEMARKETERS THAT DO NOT FILE A TAX RETURN WITH THE STATE OF MONTANA TO MAINTAIN A REGISTERED OFFICE OR A REGISTERED AGENT IN THIS STATE; REVISING EXEMPTIONS FROM TELEMARKETING REGISTRATION AND BONDING REQUIREMENTS; DECREASING BOND REQUIREMENTS FROM \$50,000 TO \$10,000; REQUIRING A SELLER OR TELEMARKETER SOLICITING FOR RELIGIOUS, CHARITABLE, OR EDUCATIONAL ORGANIZATIONS TO INFORM CONSUMERS OF THE AMOUNT OF ANY MONEY COLLECTED THAT IS RETAINED BY THE SELLER OR TELEMARKETER IF THE CONSUMERS ASK; MODIFYING PROVISIONS RELATING TO FUNDING FOR A TELEMARKETER FRAUD CONSUMER AWARENESS PROGRAM AND ELIMINATING THE REQUIREMENT THAT THE ATTORNEY GENERAL ESTABLISH A TELEMARKETING FRAUD CONSUMER AWARENESS PROGRAM; REQUIRING THAT CIVIL FINES RECOVERED BY THE ATTORNEY GENERAL RELATED TO TELEMARKETING BE PLACED IN THE SPECIAL REVENUE ACCOUNT OF THE DEPARTMENT OF ADMINISTRATION TO BE USED IN REGULATING TELEMARKETING; PROHIBITING THE USE OF AUTOMATIC DIALING DEVICES BY TELEMARKETERS; INCREASING THE CIVIL PENALTY THAT AN INDIVIDUAL CAN RECOVER FOR TELEMARKETING VIOLATIONS FROM \$500 TO \$1,500; CLARIFYING THAT VENUE FOR CASES INVOLVING VIOLATIONS OF TELEMARKETING LAWS MUST BE IN MONTANA; AND AMENDING SECTIONS 30-14-1404, 30-14-1405, 30-14-1406, 30-14-1407, 30-14-1411, 30-14-1412, AND 30-14-1413, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-14-1404, MCA, is amended to read:

"30-14-1404. Registration of sellers or telemarketers ~~--disapproval of scripts.~~ (1) (a) Unless exempt under 30-14-1405, a person may not act as a seller or telemarketer without first having registered with the department.

(b) The initial application for registration must be approved by the department prior to a seller or telemarketer offering or offering for sale consumer goods or services through any medium.

(c) A registered seller or telemarketer shall submit an application for renewal of registration annually to the department.

(d) The application for a certificate of registration or renewal must include but is not limited to the following information:

(i) the true name, current address, telephone number, and location of the seller or telemarketer, including each name under which the seller or telemarketer intends to engage in telemarketing;

(ii) each occupation or business that the seller's or telemarketer's principal owner has engaged in for the 2 years immediately preceding the date of the application;

(iii) whether any principal or manager has been convicted or pleaded guilty to or is being prosecuted by indictment for racketeering, violations of state or federal securities laws, or a theft offense;

(iv) whether there has been entered against any principal or manager an injunction, a temporary restraining order, or a final judgment in any civil or administrative action involving fraud, theft, racketeering, embezzlement, fraudulent conversion, misappropriation of property, or violation of any federal or state consumer protection law. The information must include any pending litigation against the applicant.

(v) whether the seller, at any time during the previous 7 years, has filed for bankruptcy, been adjudged bankrupt, or been reorganized because of insolvency;

(vi) the true name, current home address, date of birth, social security number, and all other names of the following:

(A) each telemarketer or other person to be employed by the seller;

(B) each person participating in or responsible for the management of the seller's business; and

(C) each person, office manager, or supervisor principally responsible for the management of the seller's business;

(vii) the name, address, and account number of every institution where banking or any other monetary transactions are conducted by the seller; and

(viii) a copy of all scripts, outlines, or presentation material that the seller will require a telemarketer to use when soliciting, as well as all sales information to be provided by the seller to a purchaser in connection with any solicitation. ~~The department may disapprove the use of any script, outline, or presentation material on the basis that it is knowingly misleading to a consumer or that it does not comply with the requirements of 30-14-1411(1)(g).~~

(E) A REGISTERED SELLER OR TELEMARKETER SHALL SEND TO THE DEPARTMENT A COPY OF ANY SCRIPT, OUTLINE, OR PRESENTATION BEFORE IT IS USED FOR SOLICITING PURPOSES.

(2) (a) The application for registration or renewal must be accompanied by a surety bond in the amount of ~~\$50,000~~ \$10,000. The bond must provide for indemnification to the state of Montana for any person suffering a loss as the result of violation of this part.

(b) The surety may for any cause cancel the bond upon giving a 60-day written notice by certified mail to the applicant and to the department. Unless the bond is replaced by that of another surety before the expiration of the 60-day notice of cancellation, the registration of the seller or telemarketer must be treated as lapsed.

(c) The surety bond must remain in effect for ~~1 year~~ 6 months from the period the telemarketing business ceases to operate in this state.

(d) (i) Any business required under this part to file a bond with a registration application may file, in lieu of the bond, a certificate of deposit, cash, or a government bond in the amount of ~~\$50,000~~ \$10,000.

(ii) The department shall hold the cash, certificate of deposit, or government bond for ~~1 year~~ 6 months from the period the telemarketing business ceases to operate in this state or registration lapses in order to pay claims made against the telemarketing business for its activities during its period of operation in this state.

(iii) For the purposes of this section, "government bond" means any United States bond, treasury note, or other public debt obligation of the United States that is unconditionally guaranteed as to both interest and principal by the United States.

(e) The registration of a telemarketing business must be treated as lapsed if at any time the amount of the bond, cash, certificate of deposit, or government bond falls below the amount required by this section.

(f) The aggregate liability of the surety company to the state of Montana for all persons injured by a seller's or telemarketer's violations may not exceed the amount of the bond.

(3) The following constitute a violation of this part:

(a) failure to register, maintain, or renew a registration if required;

(b) failure to meet the surety bond requirement if required to provide a bond;

(c) including any false or misleading information on a registration application; ~~and~~

(d) the use of any script, outline, or presentation material that has ~~been disapproved by~~ NOT BEEN SENT TO the department; or

~~(d)~~(e) misrepresenting that a seller or telemarketer is registered.

(4) A violation of subsection (3) ~~of this section~~ also constitutes a violation of 30-14-103 and is subject to the penalty provisions of 30-14-1414 and the Montana Unfair Trade Practices and Consumer Protection Act

of 1973."

NEW SECTION. Section 2. Registered agent and registered office. (1) Each seller and telemarketer that does not file a tax return with the state of Montana shall continuously maintain in this state:

- (a) a registered office that may but need not be the same as any of its places of business; or
- (b) a registered agent, who must be one of the following:
 - (i) an individual who resides in this state;
 - (ii) a domestic corporation or not-for-profit domestic corporation; or
 - (iii) a foreign corporation or not-for-profit foreign corporation authorized to transact business in this state.

(2) Unless the registered agent signed the document making the appointment, the appointment of a registered agent or a successor registered agent is not effective until the registered agent delivers a statement in writing to the secretary of state accepting the appointment.

Section 3. Section 30-14-1405, MCA, is amended to read:

"30-14-1405. Exemptions from registration and bonding. The registration and bonding requirements of 30-14-1404 do not apply to:

(1) any securities, commodities, or investment brokers, dealers, or investment advisers or any associates of securities, commodities, or investment brokers, dealers, or investment advisers who are subject to licensure or registration by the securities and exchange commission, the national association of securities dealers, or another self-regulatory organization, as defined by 15 U.S.C. 78(c), or by an agency of this state or any other state and who are soliciting within the scope of their license or registration;

(2) a person engaged in solicitation for a religious, charitable, ~~political~~, educational, or other noncommercial purpose or a person soliciting for a domestic or foreign nonprofit corporation that is registered with the Montana secretary of state, ~~unless the entity on whose behalf the person is engaged in solicitation has a membership made up of members of the public and the payment of dues or membership fees is a requirement for membership in the entity;~~

(3) a business-to-business sale;

(4) a person that solicits sales by periodically publishing and delivering a catalog of the person's merchandise to prospective purchasers, if the catalog:

- (a) contains a written description or illustration of each item offered for sale;
- (b) includes the business or home address of the person soliciting the sale;

- (c) includes at least 20 pages of written material and illustrations;
- (d) is distributed in more than one state; and
- (e) has a circulation by mailing of not less than 150,000;
- (5) a person who solicits contracts for maintenance or repair of goods previously purchased from that person or from the person on whose behalf the solicitation is made;
- (6) a person soliciting a transaction regulated by the commodity futures trading commission if the person is registered or temporarily licensed with the commodity futures trading commission under the Commodity Exchange Act, Title 7, chapter 1, of the United States Code, and the person's registration or license is not expired, suspended, or revoked;
- (7) a supervised financial organization or parent, subsidiary, or affiliate of a supervised financial organization;
- (8) an insurer authorized to transact insurance under Title 33, chapter 2, part 1, a person licensed as an insurance producer under Title 33, chapter 17, part 2, or staff members, licensed or unlicensed, of the producer;
- (9) a person soliciting the sale of services provided by a satellite or cable television system or a radio or television station authorized by the federal government or this state to provide services in this state;
- ~~(10) a telephone company or its subsidiary or agent or other business regulated by the Montana public service commission, the federal communications commission, a rural telephone cooperative or its subsidiary or agent, or a federally licensed cellular telephone or radio telecommunication service provider;~~
- ~~(11)~~(10) a person soliciting business from consumers that have ~~an existing business relationship with~~ or have previously purchased from the business enterprise for which the person is soliciting within the previous 180 days;
- ~~(12)~~(11) a person operating a retail business establishment under the same name as that used in the solicitation and:
 - (a) the products or services are displayed and offered for sale at the business establishment; and
 - (b) a majority of the person's business involves the consumer obtaining the products or services at the business establishment;
- ~~(13)~~(12) a person soliciting for the sale of a magazine or newspaper of general circulation;
- ~~(14)~~(13) an issuer or a subsidiary of an issuer that is authorized to offer securities for sale in this state;
- ~~(15)~~(14) a book, video, record, or multimedia club, contractual plan, or arrangement:
 - (a) under which the seller provides the consumer with a form that the consumer may use to instruct the

seller not to ship the offered merchandise;

(b) that is regulated by the federal trade commission regulation, 16 CFR 425, concerning the use of negative option plans by sellers in commerce; or

(c) that provides for the sale of books, videos, records, multimedia products, or other goods that are not covered by subsection ~~(15)(a)~~ (14)(a) or ~~(15)(b)~~ (14)(b), including continuity plans, subscription arrangements, standing order arrangements, single sales, supplements, or series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive the merchandise on a periodic basis;

~~(16)~~(15) a real estate salesperson or broker licensed by this state;

~~(17) a person that has provided telemarketing sales services under the same name and derives 50% of gross telemarketing sales revenue from contracts with persons exempted under this section from registration requirements;~~

~~(18)~~(16) a person soliciting the sale of food or food products if the solicitation is not intended to and does not result in a sale in excess of \$100 to a single address; OR

(17) A BUSINESS THAT IS REGULATED BY THE FEDERAL GOVERNMENT AND IS ENGAGED IN SELLING TELEPHONE SERVICES."

Section 4. Section 30-14-1406, MCA, is amended to read:

"30-14-1406. Telemarketing fraud consumer awareness program. The department shall establish and administer a telemarketing fraud consumer awareness program. ~~The program must be funded as provided in 30-14-1407(2):"~~

Section 5. Section 30-14-1407, MCA, is amended to read:

"30-14-1407. Authority of department, attorney general, and county attorney. (1) The department, the attorney general, and a county attorney have the same authority in enforcing and carrying out the provisions of this part as they have under Title 30, chapter 14, part 1.

(2) All civil fines, costs, and fees received or recovered by the department and all civil fines recovered by the attorney general pursuant to this section must be deposited into the state special revenue account to the credit of the department and must be used to defray the expenses of the department in discharging its ~~administrative and regulatory powers and duties in relation to this section and to fund the telemarketing fraud consumer awareness program established in 30-14-1405.~~ Any excess civil fines, costs, or fees must be deposited

in the general fund.

(3) All ~~civil fines, costs, and fees~~ received or recovered by the attorney general pursuant to this section must be deposited into the state special revenue account to the credit of the attorney general and must be used to defray the expenses of the office of the attorney general in discharging its duties in relation to this section ~~and to establish a telemarketing fraud consumer awareness program similar to the program authorized in 30-14-1405.~~ Any excess ~~civil fines, costs, or fees~~ must be deposited in the general fund.

(4) All civil fines, costs, and fees received or recovered by a county attorney must be paid to the general fund of the county where the action was commenced."

Section 6. Section 30-14-1411, MCA, is amended to read:

"30-14-1411. Prohibited acts and practices. (1) It is a violation of this part for a seller or telemarketer, purposely or knowingly, to engage in the following conduct:

(a) advertise or represent that registration as a seller or telemarketer equals an endorsement or approval by the state or any political subdivision of the state;

(b) assist, support, or provide substantial assistance to any telemarketer when the seller knew or should have known that the telemarketer was engaged in any act or practice violating 30-14-1408 or this section;

(c) request a fee in advance to remove derogatory information from or improve a person's credit history or credit record;

(d) request or receive payment in advance from a person to recover or otherwise aid in the return of money or any other item lost by the person in a prior telemarketing transaction; however, this subsection does not apply to services rendered to a person by a licensed attorney;

(e) obtain or submit for payment a check, draft, or other form of negotiable paper drawn on a person's checking, savings, bond, or other account without the person's express written authorization; ~~or~~

(f) procure the services of any professional delivery, courier, or other pickup service to obtain immediate receipt or possession of a person's payment unless the goods are delivered with the opportunity to inspect them before any payment is collected; or

(g) fail to inform a consumer, regardless of whether IF the consumer asks, of the portion retained by the seller or telemarketer of any money collected on behalf of a religious, charitable, or educational organization.

(2) Failure to comply with the provisions of subsection (1) constitutes a violation of 30-14-103 and is subject to the penalty provisions of 30-14-1414 and the Montana Unfair Trade Practices and Consumer Protection Act of 1973."

Section 7. Section 30-14-1412, MCA, is amended to read:

"30-14-1412. Abusive acts and practices. (1) It is an abusive telemarketing act or practice and a violation of this part for any seller or telemarketer to engage in the following conduct:

- (a) use threatening, intimidating, or profane or obscene language;
- (b) engage any person repeatedly or continuously with behavior a reasonable person would consider annoying, abusive, or harassing;
- (c) initiate a telemarketing call to a person who has stated previously, in compliance with 16 CFR 310 and 47 CFR 64.1200, that the person does not wish to receive solicitation calls from that seller or telemarketer;
- (d) engage in telemarketing to a person's residence at any time other than between ~~8 a.m.~~ 9 a.m. and ~~9 p.m.~~ 7 p.m. local time at the called person's location;
- (e) use or connect to a telephone line an automatic dialing-announcing device, predictive dialing device, or similar device, unless:
 - (i) the person being contacted has knowingly authorized receipt of the message;
 - (ii) THE AUTOMATIC DIALING-ANNOUNCING DEVICE IS BEING USED BY A SCHOOL DISTRICT TO CONTACT STUDENTS, PARENTS, OR EMPLOYEES;
 - (iii) THE SELLER OR TELEMARKETER HAS HAD A BUSINESS RELATIONSHIP WITHIN THE LAST 18 MONTHS WITH THE PERSON BEING CALLED;
 - (iv) THE MESSAGE IS ADVISING EMPLOYEES OF WORK SCHEDULES; OR
 - (v) THE USE OF THE AUTOMATIC DIALING-ANNOUNCING DEVICE IS BY A GOVERNMENTAL ENTITY;
- ~~(e)~~(f) engage in any other conduct that would be considered abusive to any reasonable consumer; or
- ~~(f)~~(g) intentionally block a person using caller identification or "*69" from accessing the seller's or telemarketer's phone number. It is not a violation of this subsection ~~(4)(f)~~ (1)(g) to provide a reasonable substitute name and number that accurately identify the entity causing the call to be made and a working telephone number at which the entity's personnel can be contacted.

(2) The department or the attorney general may seek injunctive or declaratory relief or any other remedy provided in Title 30, chapter 14, part 1, for any violations of this section."

Section 8. Section 30-14-1413, MCA, is amended to read:

"30-14-1413. Civil remedies -- venue -- burden of proof. (1) The sale of any goods or services by an unregistered seller or telemarketer that is required to register is void. A person obtaining a judgment for damages, attorney fees, or costs against a seller or telemarketer pursuant to this section has the right to be reimbursed for

those damages, attorney fees, or costs from any bond or security posted by the seller or telemarketer pursuant to the provisions of 30-14-1404.

(2) A person that suffers a loss or harm as a result of an unfair and deceptive act or practice or a prohibited act or practice is entitled to recover actual damages or ~~\$500~~ \$1,500, whichever is greater, attorney fees, court costs, and any other remedies provided by law.

(3) In addition to the remedies provided in subsection (2), a person that suffers harm as a result of an abusive act or practice is entitled to receive injunctive or declaratory relief.

(4) (a) The department, the attorney general, or a county attorney, on behalf of state residents who have suffered a loss or harm as a result of a violation of this part, may seek any remedy provided by Title 30, chapter 14, part 1.

(b) (i) The proper place for trial for an action based on a claim of a violation of this part is the district court of Lewis and Clark County or the county in which the alleged violation occurred.

(ii) A seller or telemarketer that is not a resident of this state or domiciled in this state and that does not maintain its principal place of business in this state shall agree to the venue provisions of subsection (4)(b)(i) as a prerequisite to doing business in this state.

(5) In a civil proceeding alleging a violation of this part, the burden of proving an exemption under 30-14-1405 or an exception to a definition contained in 30-14-1403 is on the person claiming the exemption or exception."

NEW SECTION. Section 9. Political surveys by telephone -- political campaigning and soliciting by telephone. (1) A person or organization conducting a political survey in this state by the use of telephones shall file a copy of the survey questions with the commissioner of political practices prior to conducting the survey. The person or organization shall also file with the survey questions information containing the name of the person or entity conducting the survey and on whose behalf the survey is being conducted.

(2) A person or organization engaged in campaigning for a political candidate or political party by the use of telephones or engaged in soliciting contributions for a political candidate or political party by the use of telephones shall file with the commissioner of political practices the name of the person or organization engaged in the political campaigning or political solicitation.

(3) A person or organization that violates a provision of subsection (1) or (2) is subject to the provisions of 13-37-128.

NEW SECTION. **Section 10. Codification instruction.** (1) [Section 2] is intended to be codified as an integral part of Title 30, chapter 14, part 14, and the provisions of Title 30, chapter 14, part 14, apply to [section 2].

(2) [Section 9] is intended to be codified as an integral part of Title 13, chapter 35, part 2, and the provisions of Title 13, chapter 35, part 2, apply to [section 9].

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